

DP-301244

REMARKS

Claims 1-22 are pending in the present Application. Claims 1 and 7 have been amended, Claims 21 and 22 have been cancelled as drawn to a non-elected invention, and Claims 23 - 32 have been added, leaving Claims 1 - 32 for consideration upon entry of the present Amendment.

Claims 1 and 7 have been amended to more clearly claim the present invention. Support for this amendment can at least be found in on Page 7, lines 25 - 27 as originally filed.

Claims 23 - 32 have been added to further claim the present invention. Support for these new claims can at least be found in on Page 7, line 10 - Page 8, line 8, as well as in the claims and Figure 2, as originally filed.

No new matter has been introduced by these amendments or new claims. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Information Disclosure Statement

Applicants note that the Examiner did not individually initial the art on page 2 of 2 of the PTO Form A820 for the Information Disclosure Statement (IDS) mailed November 19, 2003, even though the bottom of page 2 of 2 was signed as considered on March 3, 2004. Consideration of each reference submitted in the IDS mailed November 19, 2003 and return to the Applicants of a fully initialed page 2 of 2 are respectfully requested.

Applicants also note that the Examiner has not considered the art submitted in the IDS mailed April 15, 2004. Applicants respectfully request that the art submitted in this IDS be considered and a fully initialed PTO Form A820 be returned to the Applicants.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1, 2, 7, 8, 13, and 16 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 5,329,806 to McClahanan. Applicants respectfully traverse this rejection.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987).

DP-301244

The design of the sensor of McClahanan is a different design than the sensor of the present claims. For example, the insulator of McClahanan does not receive the second portion and extend beyond the second portion toward a second end of the sensor element. The terminals of McClahanan are welded to the sensor element (Col 3, lines 10 – 12), and therefore, the insulator does not support the weight of the terminals. Since McClahanan at least fails to teach an insulator that supports the weight of the terminal, McClahanan fails to anticipate the present claims. Reconsideration and withdrawal of this rejection are respectfully requested.

Applicants also note that it is alleged that “the seal is made of one piece, as can be seen from the shading of part 38...” (Office Action dated July 13, 2005) Applicants continue to contend that McClahanan et al. fail to teach a one piece seal as is taught in the present application. Applicants note that the Board of Patent Appeals agrees with the Applicants assessment of the seal disclosed in McClahanan et al. (See Decision on Appeal, pages 5 – 7)

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 5, 6, 9, 11, and 12 stand rejected under 35 U.S.C. § 103(a), as allegedly anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over McClahanan. Applicants respectfully traverse this rejection.

It is first noted, as stated above, McClahanan fails to teach several aspects of the present claims. As dependent claims from those claims, McClahanan fails to teach or suggest these elements, and these elements would not be obvious from the teachings of McClahanan. Additionally, it is alleged, that it would have been obvious to use the materials claimed in the present application in place of the materials suggested by McClahanan. Applicants respectfully disagree.

McClahanan uses particular materials in particular locations. Each component has a function and the materials were chosen according to the function. It is not obvious to merely change to a different material. There is no expectation that the component will function as desired if different materials are employed.

Previously, it was very common to use glass around the sensor element and to weld the terminals to the sensor element. This design was difficult to manufacture and was susceptible to breakage. The present invention does not require a glass seal (e.g., 46 in McClahanan) or require

DP-301244

the welding of the terminals to the sensor element. The present design employs a differently design where the terminals are supported by the insulator, e.g., the ceramic insulator.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

There is no motivation, or expectation of success to merely change the materials of various components of McClahanan in order to attain the materials claimed in the present application. Therefore, not only would the combination fail to attain the present claims as described above, the combination is not proper. No *prima facie* case of obviousness has been established. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 13, 16, 17, 19, and 20 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over McClahanan in view of U.S. Patent No. 6,315,880 B1 to Reidmeyer. Applicants respectfully traverse this rejection. Claim 18 stands rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over to McClahanan in view of Reidmeyer as set forth in the rejection of Claim 16, further in view of Kuisell. Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over McClahanan in view of Reidmeyer as set forth in the rejection of Claim 13, further in view of U.S. Patent No. 5,874,664 to Watanabe. Applicants respectfully traverse these rejections.

It is admitted in the Office Action that McClahanan fails to teach a one piece seal, and is alleged that it would be obvious to use the one piece seal of Reidmeyer in the design of McClahanan. However, such a combination would require a redesign of the sensor of McClahanan. The Office Action appears to be suggesting the elimination of the ridges 68, the desire of the entire cap 38, actually, a redesign of the entire sealing system of McClahanan.

DP-301244

However, there is no suggestion or motivation provided by either reference to redesign this element, and there is no expectation of success. The particular design of the cap of McClahanan is illustrated, described, and claimed. There is not motivation to change it. Hence, no *prima facie* case of obviousness has been established.

It is also noted that the other references fail to remedy the deficiencies of McClahanan and Reidmeyer, and therefore, even in combination, fail to render the present claims obvious. Reconsideration and withdrawal of these rejections are respectfully requested.

Claims 4 and 10 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over McClahanan in view of U.S. Patent No. 5,817,920 to Kuisell. Applicants respectfully traverse this rejection. Applicants respectfully traverse this rejection.

Applicants first note that these claims are dependent claims from allowable independent claim, and are therefore, by definition, allowable. Additionally, as noted above, selection of the materials can change how the component functions. There is no motivation to change the materials of McClahanan as suggested in the Office Action because there is no expectation of success. It is further noted, that since Kuisell fails to remedy the deficiencies of McClahanan, even if combined, the combination will fail to render the claims obvious as discussed in detail above. Hence, reconsideration and withdrawal of this rejection are respectfully requested.

Reconsideration and withdrawal of this rejection are respectfully requested.

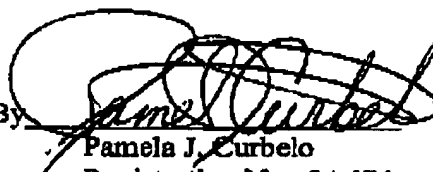
DP-301244

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the rejection(s) and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

CANTOR COLBURN LLP

By 
Pamela J. Curbelo
Registration No. 34,676

Date: October 13, 2005
CANTOR COLBURN LLP
55 Griffin Road South
Bloomfield, CT 06002
Telephone (860) 286-2929
Facsimile (860) 286-0115